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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No. 9160 of 1988

Date of decision: 17.8.2007

M/s Sri Ganesh Rice Mills, Tohana **...Petitioner**

Versus

Director Food and Supplies, Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Piyush Bansal, Advocate for the petitioner.

Mr. Rajesh Verma, Assistant Advocate General, Haryana

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RAJESH BINDAL, J.

The prayer made in the writ petition is for issuance of a direction to the District Food and Supplies Controller, Hisar for release of payment of the amount of difference of sales tax leviable on the supply of rice by the petitioner to the State and further seeking a restraint against the Sales Tax Authority from assessing the amount of difference of tax against the petitioner.

It is not disputed that an identical issue has been gone into by this Court in Civil Writ Petition No. 2864 of 1988 M/s Saraswati Rice & Gen. Mills, Assandh Vs. State of Haryana and others decided on December 2, 1988 wherein the instructions issued by Food Corporation of India, to whom the levy rice is ultimately supplied for the central pool have been noticed, which take care of the relief sought by the petitioner in the present writ petition. The same are to the following effect:-

> "1. The D.F.S.C. concerned is required to submit their claims for reimbursement of the differential tax on levy rice, party-wise, duly supported by the (1) Assessment order, (ii) tax paid receipt and (iii) a certificate from the Haryana

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State Taxation Department indicating inter-alia (a) The tax paid by the dealer on paddy "and differential amount of tax levied on him on levy rice as also on levy free rice and (b) the quantity and price of paddy procured by the dealer and the quantity and value on which levy rice was delivered by the dealer to the State Government.

2. Penalty/penalties imposed by the Assessing Authority, if any, is not be reimbursed.
3. The element of incidentals included in the computation of tax is to be ignored as no tax is to be paid on it.
4. The reimbursement of tax would be to the extent of differential tax paid by the dealers on the levy price only.
5. No interest due to delay in the reimbursement/payment of the differential tax on levy rice is to be paid."

Once issue regarding the entitlement of the difference of the tax on the levy rice supplied by the petitioner is already taken care of by the authorities, nothing is left for this Court to adjudicate upon. However, it is made clear that there is no substance in the contention raised by learned counsel for the petitioner to the effect that Sales Tax Authority be restrained from recovering the amount of difference of tax from the petitioner till such time the same is reimbursed by the Food and Supplies Department. The assessment of tax and the recovery of the same by the petitioner from the purchase of goods are two different sets of transactions. Even otherwise, it is mentioned in the instructions that the claim for payment of difference of tax is to be supported by an assessment order.

Accordingly, as the issue raised in the petition has already taken care of by the authorities, I do not find any merit in the petition and the same is disposed of as such.

August 17, 2007 **(Rajesh Bindal)**
Pka **Judge**